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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Market Entry and Regulation	)	CC Docket
of International Common Carriers	)	No. 93-___
With Foreign Carriers Affiliations	)	

PETITION FOR RULEMAKING

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY

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SUMMARY

The Commission should initiate a rulemaking and implement rules to deal with the problem of asymmetric regulation and market entry policies in the global services market. The Commission has recognized repeatedly the significance of these issues in the past, and has attempted to deal with them on a case-by-case basis. However, the pace at which the global services business is changing, and the myriad ways in which foreign carriers are seeking entry into the U.S., have outpaced the Commission's ability to address these issues on an ad hoc basis.

The Commission therefore should investigate: (1) whether and to what extent affiliates of foreign firms should be permitted to participate in the U.S. services market, at the same time their home markets prohibit or restrict comparable market access by U.S. firms; (2) what factors should be utilized to measure "comparable" market access opportunities for U.S. firms; and (3) if entry into the U.S. services market is permitted, what conditions are appropriate to foster the development of effective competition in the global services market and to safeguard against the leveraging of market power to the detriment of U.S. customers and competition.

AT&T believes that this investigation will demonstrate that it is contrary to the public interest to permit foreign carriers to enter the U.S. services market

while U.S. carriers are denied comparable opportunities to compete abroad. Similarly, AT&T believes that FCC policy should prevent foreign carriers from entering into exclusive or discriminatory arrangements with a U.S. affiliate -- as BT and MCI propose to do -- which have the effect of leveraging foreign market power to reduce competition in U.S. services, and choices for U.S. consumers. Further, foreign carriers should not be authorized to enter the U.S. market while at the same time using their foreign market power to extract above-cost, discriminatory accounting payments from U.S. carriers and their customers.

The need for a comprehensive set of rules is dramatized by a number of recent efforts of foreign carriers to enter the U.S., including the acquisition of TLD by Telefonica de Espana and the proposed alliance between British Telecom and MCI Telecommunications Corporation. Although not all aspects of BT/MCI's plans have been revealed, it appears, based on those documents that have been made public, that the parties intend to combine the parties' global service offerings (other than IDD voice and private line service) in a joint venture controlled by BT; enter into exclusive arrangements for such services whereby neither BT nor MCI will offer to participate with other carriers to make comparable services available; and discriminate against other carriers by directing all international switched and private line traffic to each other except as prevented by regulators. The parties, in short, seek to capitalize on BT's control over 97% of the local loops in the U.K. and that country's regulatory policies which make it impractical to compete with BT to undermine the abilities of other U.S. carriers to compete with the alliance.

Although the alliance is inconsistent with FCC policy in a number of respects, Commission review -- absent a comprehensive rulemaking -- will be fragmented among a variety of 214 proceedings, cable landing license applications and reviews, and individual complaints. In addition, there will continue to be an increasing number of issues raised by the activities of other foreign entrants to the U.S. Telefonica has suggested that it would be preferable if this ad hoc approach were replaced with a comprehensive set of rules that guide the actions and expectations of all parties. AT&T agrees. For that reason, AT&T believes that the Commission should adopt comprehensive rules that would embrace entry by foreign carriers, but on terms that create a level playing field and eliminate the ability of foreign carriers to leverage their market power in the provision of services to U.S. customers.

In particular, the rules AT&T proposes would require that foreign carriers agree, prior to entry, to a number of conditions intended to minimize their ability to leverage foreign market power in the U.S. services market. These include prohibitions on exclusive or discriminatory arrangements between the foreign carrier and its U.S.

affiliate, fair proportionate return, and the reduction of accounting rates to cost-based, non-discriminatory levels. In addition, the rules would address asymmetric market access by requiring, as a condition of foreign entry, that the home markets of foreign carriers be opened on a comparable basis to U.S. carriers within a reasonable period of time, within two years.

In a global market, these rules are essential to preserve competition not just on a global basis, but within the U.S. as well. With customers requiring the ability to communicate on a seamless basis "everywhere", those carriers unable to offer a full range of services not only will be squeezed from the outbound international segment of the market, but also will be placed at a disadvantage in the provision of U.S. interexchange services. These rules, therefore, are necessary to preserve "so far as possible, to all people of the United States a rapid, efficient Nation-wide, and world wide wire and radio communication service..."

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Market Entry and Regulation of International Common Carriers With Foreign Carrier Affiliations	)	CC Docket No. 93-

PETITION FOR RULEMAKING

American Telephone and Telegraph Company ("AT&T"), in accordance with Section 1.401 of the Commission's Rules, submits this Petition for Rulemaking. AT&T asks the Commission to establish a proceeding to review, in a comprehensive way, the issues and policies related to foreign carrier participation in the U.S. telecommunications market, and to promulgate rules which address the current regulatory dichotomy between the United States and foreign countries.

INTRODUCTION

The international services market is undergoing rapid transformation from a system of interconnected national markets to an integrated global market. Today, U.S. and foreign carriers increasingly are attempting, both unilaterally and through alliances, to provide global telecommunications services on an end-to-end basis to customers in multiple markets. Because the U.S. is both the largest and most open services market in the world, more and more foreign carriers are seeking to enter and expand their operations in the United States. At the same time, American carriers are precluded by foreign laws or market barriers from entering or expanding their operations in foreign markets. The Commission's existing international regulatory and settlements policies, designed by the Commission in an earlier era, do not address satisfactorily the changing market structure.

Commission policies to date have focused on introducing and fostering competition in U.S. interexchange and outbound international services. The Commission not only has supported open entry, but has embraced an aggressive regulatory agenda, creating rules governing access tariffs, equal access, open network architecture, cost allocation, number portability and other matters designed to foster competition among multiple service providers.

Despite the U.S. record of reduced prices and expanded service options to customers, foreign governments have not followed suit, and are either moving to open their markets to competition slowly, or not at all. Most countries appear to have opted for fewer service offerings and higher prices for telecommunications services in order to serve other governmental or private interests. Some countries, like the United Kingdom, are moving toward competition, but have not yet developed policies to separate monopoly and competitive service providers, or to require the monopoly provider to make equal access to essential facilities available to potential competitors on terms that would permit the development of effective competition. In virtually all foreign markets, therefore, American service providers lack market access comparable to that which foreign carriers enjoy today in the U.S.

In recent decisions, the Commission has acknowledged its concerns with the lack of comparable market access for U.S. carriers,[1] and in one context (viz., international private line resale), it has established a market entry standard that is based on the relative liberalization of international services competition in the foreign market. However, the Commission thus far has elected to assess the public policy implications of asymmetrical market entry on a case-by-case approach in individual Section 214 applications, cable landing licenses, and individual contract carrier arrangements, resulting in different market entry standards dependent on the form of entry.

A second significant issue arises if and when such entry is (or already has been) permitted. Virtually all potential foreign entrants into the U.S. services market retain legal or de facto monopoly control over the essential

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[1] Acquisition of TLD of Puerto Rico, Order, Authorization and Certificate, 8 FCC Rcd. 106, 108 (1992) ("TLD Acquisition Order").

access and distribution facilities necessary to complete international calls to a particular country, or countries. The ability to control these essential facilities, coupled with the incentive to favor their own U.S. affiliate, create the danger that foreign carriers will select which U.S. carriers offer which global services to U.S. customers. If permitted, this will undermine competition among U.S. carriers not only for international outbound services, but also for the interexchange services that U.S. customers demand as part of their global service needs. While the Commission has recognized these dangers, it has relied on its treatment of such carriers as "dominant", together with other conditions imposed on a case-by-case basis, to address the problem. Again, this ad hoc approach has offered little guidance for new situations.

The unsatisfactory results of the current approach is exemplified by its application to the "alliance" announced by British Telecom and MCI. While BT's initial strategy to enter the U.S. services market in March 1993 through private line resale is subject to Commission review under a market equivalency standard, it is unclear whether the Commission will review, and if so under what standard, BT's more significant entry through acquisition of a substantial but non-controlling interest in MCI. Thus, there is a risk that a foreign carrier with control over 97% of the local distribution facilities in the U.K. will combine with the second largest U.S. interexchange carrier, and that the parties will enter into exclusive arrangements that prevent other U.S. carriers from offering a number of competitive services to U.S. customers -- all without a review based on clearly defined policies, through which the "public interest" issues under the Communications Act can be determined.

AT&T recommends that the Commission issue a Notice of Proposed Rulemaking to investigate and promulgate comprehensive rules that will govern foreign entry into the U.S. services market, and the nature of regulation applicable to such entry. The rule AT&T proposes would address these issues in two respects. First, the Commission should condition any authorization for entry into the U.S. services market by foreign carriers having the ability to discriminate among U.S. carriers in their home markets on the agreement by the foreign carrier (and any U.S. affiliate) to non-structural safeguards to minimize the opportunity for the foreign carrier to leverage its monopoly power. These conditions should be imposed as a prerequisite to entry by a new foreign carrier or expansion by a foreign carrier presently operating in the U.S. At a minimum, the Commission should require the following:

> (1) neither the foreign carrier nor its affiliates will enter into any exclusive arrangements for the provision of basic or enhanced services;
>
> (2) the foreign carrier will not return more than a proportionate share of foreign-billed traffic to its U.S. affiliate, or allocate

foreign-billed traffic among U.S. carriers in a manner that discriminates in favor of its U.S. affiliate; nor will the U.S. affiliate bargain for or agree to accept more than its proportionate share of return traffic from the foreign carrier, or bargain for or agree to accept any allocation of return traffic that discriminates in favor of itself;

(3) the foreign carrier agrees that it will within thirty (30) days reduce accounting rates for all U.S. carriers to the lesser of cost-based levels, as defined by this Commission, or the lowest rate charged by the foreign carrier to other telecommunications entities from any other country except where and to the extent justified by demonstrable differences in cost.

(4) neither the foreign carrier nor its U.S. affiliate will refile U.S. originating or terminating traffic, without the consent of the originating and terminating carriers;

(5) the foreign carrier will make available to all U.S. carriers (unless expressly prohibited by foreign regulatory law), published and tariffed interconnection or distribution arrangements that are unbundled by discrete functions, including arrangements for servicing, provisioning, testing and maintenance; and offered on an unbundled basis at the same rates, and under the same terms and conditions, as provided to its U.S. affiliate or used in connection with its own services; and

(6) the U.S. affiliate shall certify that it will not acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the U.S., or with respect to revenue flows to or from the U.S., which is denied to any other U.S. carrier by reason of any concession, contract, understanding, or working arrangement to which the foreign carrier or its U.S. affiliate are parties.

(7) the foreign carrier will establish, and disclose, those structural or non-structural safeguards implemented to assure that information received from other U.S. carriers is protected and

not used for the benefit of itself or its U.S. affiliate.[2]

All of these conditions are within the control and discretion of the carriers themselves, and thus can and should be implemented prior to entry or expansion by the foreign carrier.

Second, before acting on any foreign carrier application, the Commission should make a finding as to whether comparable opportunities for U.S. carriers to compete in the home markets of the prospective entrants presently are available or will be available within a reasonable period not to exceed two years.[3] If so, entry should be permitted; if not, it should not.

In determining whether comparable opportunities exist, the Commission should consider:

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[2] AT&T proposes that U.S. carriers in which foreign carriers have more than a de minimus investment (e.g., five percent) should be considered as affiliates of the foreign carrier. Greater levels of investment suggest more than a passive arrangement and create incentives for discrimination.

[3] The appropriate time period within which comparable opportunity should be available could vary from case to case, but in no event should it exceed two years. A shorter period would be reasonable, however, where U.S. interests would be adversely affected in a significant way in the interim. Moreover, because of the unique, adverse consequences that flow from one-way international private line resale, a demonstration of "equivalency" is necessary prior to any grant of an international private line resale application. See note 32 infra.

(1) whether U.S. carriers are free to offer, under terms and conditions that are substantially similar to those applicable to the franchised facilities-based carriers in the foreign country, the same or substantially similar services that the foreign carrier (or its U.S. affiliate) offers or seeks to offer in the U.S.;

(2) whether structural separation or non-structural safeguards exist between monopoly and competitive market segments, including the existence of cost-allocation rules preventing cross-subsidization among monopoly and competitive services;

(3) the availability of equal access, both from customer and technical interconnection perspectives;

(4) the availability of published, non-discriminatory tariffs offering access and other forms of interconnection to existing distribution facilities of the franchised facilities-based providers in the home country;

(5) the ability of customers to access new carriers without changing their telephone number or dialing extra digits;

(6) timely and non-discriminatory disclosure of network information;

(7) the protection of carrier and customer proprietary information;

(8) whether, in light of all the above indicators, effective competition actually exists.

To determine whether comparable opportunity will be present within a reasonable time, the Commission should consider the regulatory status, plans and market structure of the country at issue; the evidence or representations of the parties; and any statements or evidence offered by agencies of the U.S. (such as the State Department, Commerce

Department or USTR) or foreign governments. The length of what is a reasonable period should be determined by the Commission taking into account the pace at which progress is being (or has already been) made in regulatory and market structure liberalization in the country of issue; the nature of U.S. market entry at issue; the commitments toward liberalization offered by the foreign regulatory authorities; and the degree of injury likely to be suffered by other U.S. carriers in the interim, and should not exceed two years. If, contrary to an FCC determination, such opportunities for U.S. carriers do not develop, the Commission should re-evaluate future expansion by the foreign carrier or its affiliates in the U.S., and reconsider any authorizations it has granted in reliance on its earlier finding.

By adopting the rule AT&T proposes, the U.S. could continue to lead by example in liberalizing its market and promoting global competition in telecommunications services, while at the same time defining principles which prevent the continued development of asymmetric market structures. AT&T believes that it is imperative that this long postponed Commission evaluation of international market issues be commenced now, not only because of the significance of some of the situations already before the Commission, but also because further delay effectively will answer the issue as well, and not in a way consistent with the public interest.

I. CURRENT REGULATORY POLICIES WERE NOT DESIGNED TO ADDRESS THE ISSUES OF A GLOBAL TELECOMMUNICATIONS SERVICES MARKET

A. Commission Policies Are Based on an Outdated Industry Model, And Are Not Suited to Ensure Competition in the Global Market

In 1985, when the Commission examined the state of competition in the U.S. international services market, it defined the relevant market as the provision of bilateral international services (switched and non-switched) by U.S. carriers to U.S. customers on specific geographic routes. That market structure where U.S. carriers, on the one end of an international circuit, and a foreign carrier, on the other end, provide outbound calling capabilities to two distinct customer bases located in each carrier's respective country reflected the bilateral service arrangements instituted and maintained from the inception of international telecommunications services in the U.S.[4]

The Commission's oversight of the international services and settlements arrangements commenced in the 1930's. Its International Settlements Policy ("ISP") thereafter was embodied in a variety of Commission decisions, policy statements, rules and practices. To ensure that American customers receive the benefits of the

[4] International Competitive Carrier Policies, 102 F.C.C. 2d 812 (1985).

competitive provision of U.S. international services, and to protect the competitive process in the U.S. from market distortions, the ISP primarily has been focused on preventing foreign monopoly carriers from whipsawing U.S. carriers in order to obtain unduly favorable terms and conditions in their traditional correspondent relationships with competing U.S. carriers.

In this bilateral market structure, the Commission has followed a general policy of liberally permitting entry without regard to nationality or foreign carrier to enhance U.S. customer choice , although on occasion the Commission has denied authority to foreign-affiliated U.S. carriers where comparable market access was not available to U.S. carriers generally.[5] By and large, however, applications by new entrants have been granted, consistent with the view that each additional competitor enhanced the workings of the competitive U.S. market and brought additional benefits to

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[5] In French Telegraph Cable Co., the Commission denied an application by FTC that proposed to use additional capacity in TAT 2 to expand its message telegraph service and to provide new services, operating and deriving revenues at both ends. In a letter to FTC, the Commission noted that U.S. telegraph operators were not allowed to operate in France and stated that ample ground existed to impose equivalent limitations on FTC in the U.S. The Commission invited FTC to reconsider its application to offer new services based upon these considerations and the application was subsequently limited to an expansion of the existing service. Letter from B. F. Waple to the French Telegraph Cable Company, April 13, 1960. The Commission granted the limited authority. 71 F.C.C.2d 393 (1960).

U.S. customers. As a result, at least 170 U.S. international carriers (American and foreign-owned) currently offer competitively priced, innovative services to U.S. customers.[6]

Today, U.S. customers with locations abroad demand global services, with the advantages of one-stop shopping and seamless technical capabilities, ordering procedures and intervals, billing formats, currencies and payments options. As a result, access to markets throughout the world to meet these customers' demands is a strategic imperative for industry players that seek to grow and prosper. Thus, the Commission now is presented with novel issues of asymmetric market access and leveraging of foreign monopoly power neither foreseen nor readily capable of resolution within the confines of the existing regulatory rules and policies that were developed in a different context.[7] As demonstrated in the next section, the various means by which foreign carriers are seeking entry into the U.S. have

[6] Foreign-owned carriers have participated in the open U.S. market, and some, like Cable & Wireless, have realized significant success. In 1990, based on its annual services revenues, Cable & Wireless was the fourth largest provider of international switched services in the U.S. (although it enjoys a protected position in multiple markets around the globe).

[7] In Docket 86-494, the first inquiry relating to the trade implications of regulatory decisions, the Commission, supported by the industry and encouraged by NTIA, decided not to attempt to unilaterally address the trade issues of foreign carrier market access to the U.S.

outpaced the Commission's ability to address effectively market access issues on an ad hoc basis, and a new approach -- consistent with the reality of a global market -- is necessary.

B. Current Policies Have Resulted in a Patchwork Approach to Foreign Carrier Entry

Foreign carriers have requested authority to enter the U.S. market in a variety of ways. Market access issues arise in the context of their requests to establish start-up operations in the U.S. market as traditional outbound resellers, or as facilities-based providers of international services. Some foreign carriers already providing U.S. domestic or international services have sought to expand their operations to acquire international facilities,[8] to supplement service offerings, or to add routes.[9] In other cases, market entry by foreign carriers has taken the form of acquisitions of or mergers with previously authorized U.S.-owned carriers.[10] Market access issues also have been

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[8] E.g., Applications of Cable and Wireless, File Nos. I-T-C-92-066 and I-T-C-92-065 for facilities-based service to Hong Kong and the United Kingdom.

[9] E.g., Applications of TLD of Puerto Rico, File Nos. I-T-C-92-242, I-T-C-93-033; I-T-C-93-091.

[10] E.g., Application of Telefonica de Espana, File No. I-T-C-92-116-AL; TLD Acquisition Order, supra note 1. BT's proposed acquisition of a 20% interest in MCI, and the combining of essential parts of the two companies' global operations under a new joint venture that BT will control, is another variation of this approach. See Section I.D.

presented in applications by foreign carriers to assume control of radio licenses, to own the U.S. end of submarine cables, or to engage in private line resale for the purposes of providing switched services on one-way or two-way basis.

The Commission has considered these applications on an ad hoc basis, and the market entry criteria have been dependent on the form of entry requested. In some cases, the market access issue is framed by Section 310 of the Communications Act because a transfer of radio licenses or a change in control is involved.[11] In other cases, where foreign carriers seek to enter or expand their operations in the U.S., the Commission has postponed resolution of the broad market entry policy issues while imposing conditions designed to the specific circumstances to ameliorate potential abuse of foreign market power. Similarly, in the context of cable landing license applications by foreign firms, where the statute compels the application of a reciprocity test, and with international private line reseller applications, where the Commission by decision has required a showing of equivalent market opportunity, market access issues are evaluated by yet another set of criteria. In addition, the Commission has revised existing rules in an

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[11] These issues, normally, can be side-stepped by applicants, as the limitations of Section 310 often can be overcome by the corporate structure or contractual arrangements employed by the applicant.

attempt to address the ability of foreign carriers to discriminate against unaffiliated U.S. carriers through accounting rates and proportionate return practices, and the other means by which they may leverage their monopoly power in the U.S.[12]

A review of the Commission's decisions relating to each of these forms of entry by foreign-affiliated carriers demonstrates the need for a uniform approach that defines the market entry standards and establishes the policies the Commission will employ to decide applications by foreign carriers or their affiliates to enter or expand their operations in the U.S. market.

1. Section 214 Proceedings for Facilities-Based Service Arrangements

Section 214 applications are evaluated under a broad public interest standard, and may be granted "on such terms and conditions as in [the Commission's] judgment the public convenience and necessity may require."[13] Despite

[12] CC Docket No. 90-337, Regulation of International Accounting Rates (Phase I), 6 FCC Rcd. 3552 (1991); CC Docket No. 91-360, Regulation of International Common Carriers, 7 FCC Rcd. 7331 (1992).

[13] 47 U.S.C. 214. In evaluating the public interest, the Commission has considered a broad range of factors, including competitive impact, financial viability of the applicant, promotion of global telecommunications through international cooperation and comity, national security, copyright protection, and educational and economic development of the region. See, e.g., Associated Communications of L.A., 8 FCC Rcd. 4060 (1993); EMI Communications Corp., 8 FCC Rcd. 2793 (1993); TLD

(footnote continued on following page)

the ample statutory authority to do so, however, the Commission generally has not considered comparability of market access in its decisions involving Section 214 applications of foreign carriers.

In January 1991, the Commission granted Cable and Wireless authorization to lease and operate private line facilities between the U.S. and Canada.[14] This decision was the first to permit a U.S. affiliate of a foreign carrier operating in multiple closed markets around the globe to provide facilities-based U.S. international private line services. In that case, however, Cable and Wireless was not seeking authority to provide its service with an affiliated carrier in Canada. Nevertheless, to ensure that the facilities would not be used to "re-file" traffic from the U.S. through Canada to third countries, the Commission

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(footnote continued from previous page)

Acquisition Order, supra note 1; Caribbean Region Telecommunications Needs During the 1985-95 Period, 3 FCC Rcd. 97, 105 (1988); AT&T Application for Northeast Corridor Project, 89 F.C.C.2d 1168, 1178 (1982); General Telephone and Elec. Corp. (GTE-Telenet Merger), 70 F.C.C.2d 2249, recon. denied, 72 F.C.C.2d 91 (1979). The Commission also has used its Section 214 authority to deny entry when it was concerned that the entrants' monopoly power in another market would be used to impede effective competition. Applications of Telephone Companies for Section 214 Certificates for Channel Facilities, 21 F.C.C.2d 307 (1970), aff'd. General Tel. of Southwest v. U.S., 449 F.2d 846 (5th Cir. 1971).

[14] File No. I-T-C-90-102, 6 FCC Rcd. 236 (1991).

placed a condition in the authorization that limited the use of the facilities for services between U.S. and Canada.

Subsequent applications were filed in 1992 by Cable and Wireless to provide switched services on a facilities basis in concert with its foreign carrier affiliate in Hong Kong and the United Kingdom.[15] These applications presented the issue of self-correspondency, and the associated opportunities for a foreign carrier to selectively discriminate in favor of its U.S. affiliate to the detriment of unaffiliated U.S. carriers. These applications remain pending.[16]

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[15] File Nos. I-T-C-92-066 and File Nos. I-T-C-92-065.

[16] During the time frame when the Commission began its evaluation of the Cable and Wireless applications to become a facilities-based correspondent with its affiliates in Hong Kong and the United Kingdom, the Commission's inquiry regarding the appropriate regulation of foreign-owned carriers was underway in Docket No. 91-360. In that case, some of the parties argued that, in view of the current asymmetry in market access for new entrants in the U.S. and foreign markets, the Commission first should decide the issues of U.S. market entry and expansion by foreign carriers, before it considered granting streamlined treatment of foreign-owned carriers. The Report and Order noted that the decision to streamline foreign carriers on a route-by-route basis did not address the fundamental issue of market entry, and the separate concurring statement of Commissioners Marshall and Duggan indicated their view that the "regulatory details" of how foreign carriers should be regulated should "follow the market entry question." Presumably, the applications of Cable and Wireless will be resolved only after this review.

In early 1992, Telefonica de Espana filed its application to acquire TLD of Puerto Rico. This application presented for the first time the question of market entry through acquisition of an existing U.S. international common carrier that corresponded with the foreign monopoly carrier parent. TLD of Puerto Rico's ownership of facilities in the TCS-1 and Taino-Carib Cable Systems also raised issues under the reciprocity standard of the Submarine Cable Landing License Act.[17]

In its decision approving the acquisition, the Commission declined to apply a strict policy of reciprocal entry. However, it found (8 FCC Rcd. at 108-09):

> [the] closed nature of foreign markets [is] a serious problem because of the potential for discrimination among U.S. carriers terminating traffic in the foreign market...and one factor, among several, that is relevant to its Section 214 public interest determination.

Further, the Commission acknowledged (id.) that:

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[17] Spain does not similarly permit U.S. carriers to operate facilities to offer services in Spain. As a threshold issue, because TLD of Puerto Rico was the holder of radio licenses, Telefonica's acquisition was considered in the context of Section 310 of the Act. The licenses were transferred to a U.S. owned company, TUPR, in which Telefonica had indirect control of 14.9% of the stock, and with which Telefonica had a contractual arrangement for the lease and operation of the licensed facilities. The transaction passed muster, therefore, under Section 310.

> U.S. entities today are denied opportunities to operate as facilities-based international service providers in foreign telecommunications markets, including Spain, [and the] long-term solution to foreign market power, which can be abused within the U.S. with or without a U.S. carrier affiliate, is greater liberalization in foreign markets.

Nevertheless, the TLD Acquisition Order "emphasize[d] ...that the circumstances of this privatization are unique."[18] After balancing these unique factors with the limited authorizations it granted to TLD, the Commission concluded that it could grant the application and craft nondiscrimination safeguards sufficient to protect unaffiliated U.S. carriers.[19] The Commission further held, however, that "due to the unique public interest and market factors associated with international facilities-based authorizations, ...facilities applications from entities affiliated with foreign carriers will require review and

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[18] Id. at 113. The unique public interest issues identified in that case included the privatization of TLD and the earmarking of the proceeds of the sale for the public education fund in Puerto Rico.

[19] A number of the conditions proposed by AT&T for a general rule are similar to those imposed by the Commission in the TLD case. These include provision of access by the foreign carrier to all U.S. carriers on non-discriminatory rates, terms and conditions; no special concessions to the U.S. affiliate of a foreign carrier relating to traffic or revenue flows; fair proportionate return; and, compliance with all U.S. policies concerning accounting rates.